

HONORABLE RICARDO MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

CITY OF ISSAQUAH, a municipal
corporation,

Plaintiff,

v.

ORA TALUS 90, LLC, a Delaware limited
liability company; and RESMARK EQUITY
PARTNERS, LLC, a Delaware limited liability
company,

Defendants.

ORA TALUS 90, LLC, a Delaware limited
liability company; and RESMARK EQUITY
PARTNERS, LLC, a Delaware limited liability
company,

Third-Party plaintiffs,

v.

TERRA TALUS LLC, a Washington limited
liability company; ELEMENT RESIDENTIAL
INC., a Washington corporation; JOSHUA
FREED, an individual; J.R. HAYES & SONS,
INC., a Washington corporation; TERRA
ASSOCIATES, INC., a Washington
corporation; TALUS MANAGEMENT

NO. 18-CV-00910 RSM

STIPULATION AND ORDER REGARDING
DEPOSITION PROTOCOL

STIPULATION AND ORDER REGARDING DEPOSITION
PROTOCOL - 1

CAIRNCROSS & HEMPELMANN, P.S.
ATTORNEYS AT LAW
524 Second Avenue, Suite 500
Seattle, Washington 98104-2323
office 206 587 0700 fax 206 587 2308

SERVICES LLC, a Washington limited liability company; and TALUS 7&8, LLC, a Washington limited liability company,

Third-Party Defendants.

TALUS 7&8 INVESTMENT, LLC, a Washington limited liability company; J.R. HAYES & SONS, INC., a Washington corporation,

Fourth-Party plaintiffs,

v.

KULCHIN FOUNDATION DRILLING COMPANY, a Washington corporation, and BIG MOUNTAIN ENTERPRISE LLC, a Washington limited liability company,

Fourth-Party

Defendants.

AND RELATED COUNTERCLAIMS AND CROSSCLAIMS

The United States federal and state governments and courts have issued states of emergency, restrictions on travel and gatherings, and modified rules and procedures designed to slow the spread of the COVID-19 pandemic. One such step is encouraging matters be conducted by telephone, video, or other remote means where it is appropriate to do so.

Accordingly, the Parties hereby jointly stipulate to the following protocol for conducting depositions in the above-captioned matter:

Administration of the Remote Deposition

1. The Parties agree to work in a collaborative and cooperative manner in attempting to schedule remote depositions consistent with the admonition in Rule 1 of the Federal Rules of Civil Procedure that states the Rules “should be construed, administered, and employed by the

STIPULATION AND ORDER REGARDING DEPOSITION
PROTOCOL - 2

CAIRNCROSS & HEMPELMANN, P.S.
ATTORNEYS AT LAW
524 Second Avenue, Suite 500
Seattle, Washington 98104-2323
office 206 587 0700 fax 206 587 2308

1 court and the parties to secure the just, speedy, and inexpensive determination of every action
2 and proceeding.”

3 2. The Parties agree that depositions shall occur through Zoom, a videoconferencing
4 software, consistent with Rule 30(b)(4).

5 3. The Parties agree that remote depositions may be recorded by audio and
6 audiovisual means consistent with the requirements of Rule 30(b)(3).

7 4. The Parties further agree that remote depositions shall be recorded by
8 stenographic means consistent with the requirements of Rule 30(b)(3), but that it is not necessary
9 for the court reporter to be physically present with the witness whose deposition is being taken
10 unless state law expressly provides otherwise.

11 5. The Parties agree to treat the stenographer as an “Officer” as defined by Rules
12 28(a)(2) and 29(a) and the Party that noticed the remote deposition shall provide the Officer with
13 a copy of this Stipulation in advance of the remote deposition.

14 6. The Officer shall be permitted to remotely administer the oath and record the
15 deposition in accordance with state law.

16 7. At the beginning of the remote deposition, consistent with Rule 30(b)(5)(A), the
17 Officer shall begin the deposition with an on-the-record statement that includes: (i) the Officer’s
18 name and company affiliation; (ii) the date, time, and place of the deposition; (iii) the deponent’s
19 name; (iv) the Officer’s administration of the oath or affirmation to the deponent; and (v) the
20 identity of all persons present (physically and remotely).

21 8. At the beginning of the remote deposition, the Officer shall require the defending
22 attorney to confirm and certify the identity of the deponent.

23 Technology

24 9. The Parties agree to work collaboratively and cooperatively and in good faith to
25 assess their respective technological abilities and to troubleshoot any issues sufficiently in
26 advance of the deposition so any adjustments can be made. The Parties also agree to work

1 collaboratively and cooperatively to address and troubleshoot technological (including audio or
2 video) issues that arise during a deposition and make such provisions as are reasonable under the
3 circumstances to address such issues. This provision shall not be interpreted to compel any party
4 to proceed with a deposition where the witness cannot hear or understand the other participants
5 or where the participants cannot hear or understand the witness.

6 10. Should technological issues persist which make it difficult to proceed with the
7 remote deposition, the Parties agree to obtain professional technical assistance (such as by
8 contacting counsel(s)'s IT personnel) in an attempt to resolve any technological issues.

9 11. Any technological issues that arise during a party's questioning of a witness that
10 delay or pause the deposition shall not be counted toward (1) the total duration of the deposition
11 (Rule 30(d)(1)), or (2) the time allocated to that party for questioning.

12 12. To the extent possible, the Parties agree that each participant attending the remote
13 deposition shall be readily visible to all other participants at all times, and their statements shall
14 be audible to all participants at all times; in the event of limited bandwidth, the Parties agree that
15 the witness, the questioning attorney, and the defending attorney shall be readily visible to all
16 other participants, and their statements shall be audible to all participants at all times. However,
17 to minimize background noise and feedback, and to facilitate clear audio, the Parties agree that
18 participants not actively speaking shall mute their microphones on the device being used to
19 conduct the remote deposition.

20 13. The Parties agree that the deponent's electronic devices (such as iPads, tablets,
21 other laptops or computers, cell phones, etc.), other than the device being used to conduct the
22 remote deposition, shall be turned off during each segment of the deposition. Notifications on
23 each participant's device being used to conduct the remote deposition, such as calendar and
24 email alerts or chat functions, shall be turned off or muted.

25 14. The Parties agree not to engage in coaching or other impermissible
26 communication with the deponent through electronic or other means while on the record. Any

1 such coaching or impermissible communication during the remote deposition shall be considered
2 a violation of this Stipulation and subject to the Court's discretion to enter appropriate sanctions.
3 This provision is not intended to conflict with the applicable Federal Rules and ethical rules
4 governing communications between counsel and their witness but to address the use of
5 technology and remote participation.

6 15. The Parties agree that objections shall be raised by an audible objection and that
7 objections raised by one party shall apply to all parties.

8 Exhibits

9 16. The Parties expressly agree that hard copies of exhibits shall not be used in any
10 deposition to minimize the risk of the spread of COVID-19, except upon prior written unanimous
11 agreement by the Parties and the deponent upon a protocol for use of hard copy exhibits.
12 However, where a questioning attorney intends to have a witness's markings become part of an
13 exhibit, a hard copy of the exhibit may be given to the witness to mark upon if the witness's
14 modification of that exhibit cannot be done using Zoom.

15 17. The Parties agree that the exhibits shall be electronically shared and introduced
16 using the software provided by the Court Reporter. Each party who intends to ask questions of
17 the deponent and introduce any exhibits shall do so using the Court Reporter's exhibit software.
18 Each attorney intending to introduce exhibits during his or her questioning agrees to sufficiently
19 familiarize him or herself with use of this exhibit sharing software prior to any depositions so as
20 to ensure exhibits can be introduced in an efficient manner during the deposition. Likewise, the
21 defending attorney also agrees to sufficiently familiarize the deponent with the use of Zoom and
22 the exhibit sharing software prior to the deponent's deposition.

23 Miscellaneous

24 18. For purposes of this Stipulation and its provisions herein, a remote deposition
25 shall constitute any deposition where at least one party or its counsel attends remotely.
26

19. The Parties agree that this Stipulation also applies to remote depositions of non-parties under Rule 45 and shall work in a collaborative and cooperative manner in attempting to schedule remote depositions of non-parties. The Parties shall provide this Stipulation and Order to any non-party under Rule 45 with the notice of the deposition.

20. The Parties agree to introduce this Stipulation as an exhibit in any party or non-party depositions. This Stipulation need not be introduced as a new exhibit in each deposition taken in this lawsuit but should be referenced in each deposition.

21. The Parties agree to revisit the terms of this Stipulation if it becomes necessary and desirable to do so.

22. The Parties agree that if any provision of this Stipulation is invalid or impermissible under applicable law, the applicable law shall control.

DATED this 26th day of August, 2020.

CAIRNCROSS & HEMPELMANN, P.S.

By: s/Terence J. Scanlan

Terence J. Scanlan, WSBA #19498
Patricia A. Laughman, WSBA #46716
524 Second Avenue, Suite 500
Seattle, WA 98104-2323
Telephone: 206-623-6501
Facsimile: 206-447-1973
Email: tscanlan@cairncross.com
Email: plaughman@cairncross.com

Attorneys for the City of Issaquah

KEATING, BUCKLIN &
MCCORMACK, INC., P.S.

By: s/Michael C. Walter

Michael C. Walter, WSBA #15044
Jeremy W. Culumber, WSBA #35423
801 Second Avenue, Suite 1210
Seattle, WA 98104
Telephone: 206-623-8861
Email: mwalter@kbmlawyers.com
Email: jculumber@kbmlawyers.com

Attorneys for the City of Issaquah

BROWN WHITE & OSBORN LLP

By: s/Cynthia M. Cohen

Cynthia M. Cohen, Admitted Pro Hac Vice
333 S. Hope Street, Suite 4000
Los Angeles, CA 90071
Telephone: 213-613-0500
Facsimile: 213-613-0550
E-Mail: ccohen@brownwhitelaw.com

HARRIGAN LEYH FARMER &
THOMSEN LLP

By: s/Tyler L. Farmer

Arthur W. Harrigan, WSBA #1751
Tyler L. Farmer, WSBA #39912
999 Third Avenue, Suite 4400
Seattle, WA 98104
Telephone: 206-623-1700

STIPULATION AND ORDER REGARDING DEPOSITION
PROTOCOL - 6

CAIRNCROSS & HEMPELMANN, P.S.
ATTORNEYS AT LAW
524 Second Avenue, Suite 500
Seattle, Washington 98104-2323
office 206 587 0700 fax 206 587 2308

*Attorneys for ORA Talus 90, LLC and Resmark
Equity Partners, LLC*

Facsimile: (206) 623-8717
Email: arthurh@harriganleyh.com
Email: tylerf@harriganleyh.com

*Attorneys for ORA Talus 90, LLC and
Resmark Equity Partners, LLC*

FOSTER GARVEY PC

STOEL RIVES LLP

By: s/Jack P. Zahner
Jack P. Zahner, WSBA #24505
1111 Third Avenue, Suite 3000
Seattle, WA 98101
Telephone: 206-689-8500
Email: jack.zahner@foster.com

By: s/Patrick Mullaney
Patrick Mullaney, WSBA #21982
600 University Street, Suite 3600
Seattle, WA 98101
Telephone: 206-624-0900
Facsimile: 206-386-7500
Email: Patrick.mullaney@stoel.com

*Attorneys for J.R. Hayes & Sons, Inc, Talus 7 &
8, LLC, and Talus Management Services LLC*

*Attorneys for J.R. Hayes & Sons, Inc,
Talus 7 & 8, LLC, and Talus Management
Services LLC*

PREG O'DONNELL & GILLET PLLC

By: s/Stephanie Ballard
John K. Butler, WSBA #28528
Stephanie Ballard, WSBA #49268
901 5th Avenue, Suite 3400
Seattle WA 98164
Telephone: 206-287-1775
Email: jbutler@pregodonnell.com
Email: sballard@pregodonnell.com

*Attorneys for J.R. Hayes & Sons, Inc., Talus 7 &
8, LLC, and Talus Management Services LLC*

WILLIAMS, KASTNER & GIBBS PLLC

CLEMENT & DROTZ, PLLC

By: s/Dean G. von Kallenbach
Dean G. von Kallenbach, WSBA #12870
Theresa H. Rava, WSBA #53159
601 Union Street, Suite 4100
Seattle, WA 98101-2380
Telephone: 206-628-6600
Facsimile: 206-628-6611
Email: dvonkallenbach@williamskastner.com

By: s/W. Scott Clement
W. Scott Clement, WSBA #16243
100 W. Harrison Street, Suite N350
Seattle, WA 98119
Telephone: 206-448-2565
Facsimile: 206-448-2235
Email: sclement@clementdrotz.com

STIPULATION AND ORDER REGARDING DEPOSITION
PROTOCOL - 7

CAIRNCROSS & HEMPELMANN, P.S.
ATTORNEYS AT LAW
524 Second Avenue, Suite 500
Seattle, Washington 98104-2323
office 206 587 0700 fax 206 587 2308

Email: trava@williamskastner.com

Attorneys for Joshua Freed

*Attorneys for Element Residential Inc., Terra
Talus, LLC and Joshua Freed*

FORSBERG & UMLAUF, P.S.

WILSON SMITH COCHRAN
DICKERSON

By: s/Vicky L. Strada

A. Grant Lingg, WSBA #24227
Vicky L. Strada, WSBA #34559
901 Fifth Avenue, Suite 1400
Seattle, WA 98164
Telephone: 206-689-8500
Facsimile: 206-689-8501
Email: glingg@foum.law
Email: vstrada@foum.law

By: s/Whitney L.C. Smith

Whitney L.C. Smith, WSBA #21159
Brian Buron, WSBA #27206
901 5th Ave., Suite 1700
Seattle, WA 98164-2050
Telephone: 206-623-4100
Facsimile: 206-623-9273
Email: smithw@wscd.com
Email: buron@wscd.com

Attorneys for Terra Associates, Inc.

Attorneys Terra Talus, LLC

OLES MORRISON RINKER & BAKER LLP

FLOYD PFLUEGER & RINGER, P.S.

By: s/Bradley L. Powell

Bradley L. Powell, WSBA #11158
701 Pike Street, Suite 1700
Seattle, WA 98101
Telephone: 206-623-3427
Email: powell@oles.com

By: s/Douglas K. Weigel

Douglas K. Weigel, WSBA #27192
Amanda D. Daylong, WSBA #48013
200 W. Thomas Street, Suite 500
Seattle, WA 98119
Telephone: 206-441-4455
Email: dweigel@floyd-ringer.com
Email: adaylong@floyd-ringer.com

*Attorneys for Kulchin Foundation Drilling
Company*

Attorneys for Big Mountain Enterprises

STIPULATION AND ORDER REGARDING DEPOSITION
PROTOCOL - 8

CAIRNCROSS & HEMPELMANN, P.S.
ATTORNEYS AT LAW
524 Second Avenue, Suite 500
Seattle, Washington 98104-2323
office 206 587 0700 fax 206 587 2308

ORDER

PURSUANT TO THE PARTIES' STIPULATION, IT IS SO ORDERED.

DATED this 4th day of September, 2020.



RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE

Presented by:

CAIRNCROSS & HEMPELMANN, P.S.

KEATING, BUCKLIN &
MCCORMACK, INC., P.S.

By: s/Terence J. Scanlan

By: s/Michael C. Walter

Terence J. Scanlan, WSBA #19498
Patricia A. Laughman, WSBA #46716
524 Second Avenue, Suite 500
Seattle, WA 98104-2323
Telephone: 206-623-6501
Facsimile: 206-447-1973
Email: tscanlan@cairncross.com
Email: plaughman@cairncross.com

Michael C. Walter, WSBA #15044
Jeremy W. Culumber, WSBA #35423
801 Second Avenue, Suite 1210
Seattle, WA 98104
Telephone: 206-623-8861
Email: mwalter@kbmlawyers.com
Email: jculumber@kbmlawyers.com

Attorneys for the City of Issaquah

Attorneys for the City of Issaquah

BROWN WHITE & OSBORN LLP

HARRIGAN LEYH FARMER &
THOMSEN LLP

By: s/Cynthia M. Cohen

By: s/Tyler L. Farmer

Cynthia M. Cohen, Admitted Pro Hac Vice
333 S. Hope Street, Suite 4000
Los Angeles, CA 90071
Telephone: 213-613-0500
Facsimile: 213-613-0550
E-Mail: ccohen@brownwhitelaw.com

Arthur W. Harrigan, WSBA #1751
Tyler L. Farmer, WSBA #39912
999 Third Avenue, Suite 4400
Seattle, WA 98104
Telephone: 206-623-1700
Facsimile: (206) 623-8717
Email: arthurh@harriganleyh.com
Email: tylerf@harriganleyh.com

*Attorneys for ORA Talus 90, LLC and Resmark
Equity Partners, LLC*

*Attorneys for ORA Talus 90, LLC and
Resmark Equity Partners, LLC*

STIPULATION AND ORDER REGARDING DEPOSITION
PROTOCOL - 9

CAIRNCROSS & HEMPELMANN, P.S.
ATTORNEYS AT LAW
524 Second Avenue, Suite 500
Seattle, Washington 98104-2323
office 206 587 0700 fax 206 587 2308

FOSTER GARVEY PC

By: s/Jack P. Zahner
Jack P. Zahner, WSBA #24505
1111 Third Avenue, Suite 3000
Seattle, WA 98101
Telephone: 206-689-8500
Email: jack.zahner@foster.com

Attorneys for J.R. Hayes & Sons, Inc, Talus 7 & 8, LLC, and Talus Management Services LLC

PREG O'DONNELL & GILLET PLLC

By: s/Stephanie Ballard
John K. Butler, WSBA #28528
Stephanie Ballard, WSBA #49268
901 5th Avenue, Suite 3400
Seattle WA 98164
Telephone: 206-287-1775
Email: jbutler@pregodonnell.com
Email: sballard@pregodonnell.com

Attorneys for J.R. Hayes & Sons, Inc., Talus 7 & 8, LLC, and Talus Management Services LLC

WILLIAMS, KASTNER & GIBBS PLLC

By: s/Dean G. von Kallenbach
Dean G. von Kallenbach, WSBA #12870
Theresa H. Rava, WSBA #53159
601 Union Street, Suite 4100
Seattle, WA 98101-2380
Telephone: 206-628-6600
Facsimile: 206-628-6611
Email: dvonkallenbach@williamskastner.com
Email: trava@williamskastner.com

Attorneys for Element Residential Inc., Terra Talus, LLC and Joshua Freed

STOEL RIVES LLP

By: s/Patrick Mullaney
Patrick Mullaney, WSBA #21982
600 University Street, Suite 3600
Seattle, WA 98101
Telephone: 206-624-0900
Facsimile: 206-386-7500
Email: Patrick.mullaney@stoel.com

Attorneys for J.R. Hayes & Sons, Inc, Talus 7 & 8, LLC, and Talus Management Services LLC

CLEMENT & DROTZ, PLLC

By: s/W. Scott Clement
W. Scott Clement, WSBA #16243
100 W. Harrison Street, Suite N350
Seattle, WA 98119
Telephone: 206-448-2565
Facsimile: 206-448-2235
Email: sclement@clementdrotz.com

Attorneys for Joshua Freed

STIPULATION AND ORDER REGARDING DEPOSITION
PROTOCOL - 10

CAIRNCROSS & HEMPELMANN, P.S.
ATTORNEYS AT LAW
524 Second Avenue, Suite 500
Seattle, Washington 98104-2323
office 206 587 0700 fax 206 587 2308

1
2 FORSBERG & UMLAUF, P.S.

3 By: s/Vicky L. Strada

4 A. Grant Lingg, WSBA #24227
5 Vicky L. Strada, WSBA #34559
6 901 Fifth Avenue, Suite 1400
7 Seattle, WA 98164
8 Telephone: 206-689-8500
9 Facsimile: 206-689-8501
10 Email: glingg@foum.law
11 Email: vstrada@foum.law

12 *Attorneys for Terra Associates, Inc.*

13
14 OLES MORRISON RINKER & BAKER LLP

15 By: s/Bradley L. Powell

16 Bradley L. Powell, WSBA #11158
17 701 Pike Street, Suite 1700
18 Seattle, WA 98101
19 Telephone: 206-623-3427
20 Email: powell@oles.com

21 *Attorneys for Kulchin Foundation Drilling*
22 *Company*

WILSON SMITH COCHRAN
DICKERSON

By: s/Whitney L.C. Smith

Whitney L.C. Smith, WSBA #21159
Brian Buron, WSBA #27206
901 5th Ave., Suite 1700
Seattle, WA 98164-2050
Telephone: 206-623-4100
Facsimile: 206-623-9273
Email: smithw@wscd.com
Email: buron@wscd.com

Attorneys Terra Talus, LLC

FLOYD PFLUEGER & RINGER, P.S.

By: s/Douglas K. Weigel

Douglas K. Weigel, WSBA #27192
Amanda D. Daylong, WSBA #48013
200 W. Thomas Street, Suite 500
Seattle, WA 98119
Telephone: 206-441-4455
Email: dweigel@floyd-ringer.com
Email: adaylong@floyd-ringer.com

Attorneys for Big Mountain Enterprises

23
24
25
26
STIPULATION AND ORDER REGARDING DEPOSITION
PROTOCOL - 11

CAIRNCROSS & HEMPELMANN, P.S.
ATTORNEYS AT LAW
524 Second Avenue, Suite 500
Seattle, Washington 98104-2323
office 206 587 0700 fax 206 587 2308

Certificate of Service

I, Kelsey M. Doyle, certify under penalty of perjury of the laws of the State of Washington that on August 26, 2020, I electronically filed this document entitled STIPULATION AND [PROPOSED] ORDER REGARDING DEPOSITION PROTOCOL using the CM/ECF system which will send notification of such filing to all attorneys of record.

DATED this 26th day of August, 2020, at Seattle, Washington.

s/Kelsey M. Doyle

Kelsey M. Doyle, Paralegal
CAIRNCROSS & HEMPELMANN, P.S.
524 Second Avenue, Suite 500
Seattle, WA 98104-2323
Telephone: (206) 254-4483
Facsimile: (206) 587-2308
E-mail: kdoyle@cairncross.com